

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #04	CCRB Case #: 202303046	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input checked="" type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 04/10/2023 11:13 PM, Monday, 04/10/2023 11:28 PM	Location of Incident: outside 41 Seaver Way; outside 349 126th Street	18 Mo. SOL 10/10/2024	Precinct: 110
Date/Time CV Reported Tue, 04/11/2023 10:58 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/11/2023 10:58 AM

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DI John Portalatin	00000	928984	110 PCT
2. PO Joshua Christel	17529	971753	110 PCT
3. PO Salvatore Tortora	20859	971708	110 PCT
4. PO Matthew Traube	23803	970264	110 PCT
5. PO Richard Schmachtenberg	15932	971674	110 PCT
6. PO Matthew Yeung	21840	972319	110 PCT
7. PO Brittany Olivares	00276	972147	110 PCT
8. PO Vincent Tufanisco	01085	972996	110 PCT
9. SGT Bryan Vesely	04352	954401	110 PCT
10. PO Joseph Peters	05558	964702	110 PCT
11. PO Matthew Dieringer	24178	969654	110 PCT
12. PO Stephen Casazza	31239	970443	110 PCT
13. PO Aaron Maltezo	13585	957801	110 PCT
14. PO Christos Christodoulou	24699	971018	110 PCT
15. SGT Justin Hubbard	03508	951829	110 PCT
16. PO Ryan Cotter	24878	962327	WARRSEC
17. PO Jack Crawford	13327	971387	110 PCT
18. PO Justin Collins	31302	973318	110 PCT
19. PO Michael Doerler	24760	969660	110 PCT
20. PO John Nunziata	24581	970037	110 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Jarren Smalls	01560	965876	052 PCT
2. DT3 Andrew Ruiz	03550	962070	INT FIO PRG
3. PO Brendan Latimer	31212	965253	052 PCT
4. DT3 Kania Washington	02612	942689	110 DET
5. DT2 Duane Atkinson	06483	929662	110 DET

Officer(s)	Allegation	Investigator Recommendation
A . PO Ryan Cotter	Off. Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
B . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
C . PO Ryan Cotter	Off. Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
D . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
E . PO Ryan Cotter	Off. Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
F . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
G . PO Ryan Cotter	Abuse: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.	
H . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
I . PO Ryan Cotter	Abuse: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.	
J . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
K . PO Ryan Cotter	Abuse: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.	
L . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
M . PO Ryan Cotter	Off. Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon ethnicity.	
N . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
O . PO Ryan Cotter	Off. Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon ethnicity.	
P . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
Q . PO Ryan Cotter	Off. Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon ethnicity.	
R . PO Ryan Cotter	Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)	
S . PO Ryan Cotter	Force: At 41 Seaver Way in Queens, Police Officer Ryan Cotter used physical force against § 87(2)(b)	
T . PO Ryan Cotter	Abuse: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.	
U . PO Ryan Cotter	Abuse: At 41 Seaver Way in Queens, Police Officer Ryan Cotter drew his gun.	
V . PO Ryan Cotter	Force: At 41 Seaver Way in Queens, Police Officer Ryan Cotter pointed his gun at § 87(2)(b)	
W . SGT Justin Hubbard	Abuse: At 349 126th Street in Queens, Sergeant Justin Hubbard improperly used his body-worn camera.	

Officer(s)	Allegation	Investigator Recommendation
X . PO Christos Christodoulou	Abuse: At 349 126th Street in Queens, Police Officer Christos Christodoulou improperly used his body-worn camera.	
Y . PO Jack Crawford	Abuse: At 349 126th Street in Queens, Police Officer Jack Crawford improperly used his body-worn camera.	
Z . PO John Nunziata	Abuse: At 349 126th Street in Queens, Police Officer John Nunziata improperly used his body-worn camera.	
AA. PO Michael Doerler	Abuse: At 349 126th Street in Queens, Police Officer Michael Doerler improperly used his body-worn camera.	
AB. DI John Portalatin	Abuse: At 349 126th Street in Queens, Deputy Inspector John Portalatin improperly used his body-worn camera.	
AC. PO Joshua Christel	Abuse: At 349 126th Street in Queens, Police Officer Joshua Christel improperly used his body-worn camera.	
AD. PO Salvatore Tortora	Abuse: At 349 126th Street in Queens, Police Officer Salvatore Tortora improperly used his body-worn camera.	
AE. PO Matthew Traube	Abuse: At 349 126th Street in Queens, Police Officer Matthew Traube improperly used his body-worn camera.	
AF. PO Richard Schmachtenberg	Abuse: At 349 126th Street in Queens, Police Officer Richard Schmachtenberg improperly used his body-worn camera.	
AG. PO Matthew Yeung	Abuse: At 349 126th Street in Queens, Police Officer Matthew Yeung improperly used his body-worn camera.	
AH. PO Vincent Tufanisco	Abuse: At 349 126th Street in Queens, Police Officer Vincent Tufanisco improperly used his body-worn camera.	
AI. PO Brittany Olivares	Abuse: At 349 126th Street in Queens, Police Officer Brittany Olivares improperly used her body-worn camera.	
AJ. SGT Bryan Vesely	Abuse: At 349 126th Street in Queens, Sergeant Bryan Vesely improperly used his body-worn camera.	
AK. PO Joseph Peters	Abuse: At 349 126th Street in Queens, Police Officer Joseph Peters improperly used his body-worn camera.	
AL. PO Stephen Casazza	Abuse: At 349 126th Street in Queens, Police Officer Stephen Casazza improperly used his body-worn camera.	
AM. PO Aaron Maltezo	Abuse: At 349 126th Street in Queens, Police Officer Aaron Maltezo improperly used his body-worn camera.	
AN. PO Justin Collins	Abuse: At 349 126th Street in Queens, Police Officer Justin Collins improperly used his body-worn camera.	
AO. PO Matthew Dieringer	Abuse: At 349 126th Street in Queens, Police Officer Matthew Dieringer improperly used his body-worn camera.	
§ 87(2)(g), § 87(4-b)		
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Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On April 11, 2023, § 87(2)(b) filed the following complaint by phone with the CCRB. § 87(2)(b) also filed a complaint by calling IAB, generating original log § 87(2)(g) which was received by the CCRB on May 30, 2023.

On April 10, 2023, at approximately 11:00 p.m., § 87(2)(b) was at the K Korner, a bar affixed to Citi Field, located at 41 Seaver Way in Queens. § 87(2)(b) and his friends, § 87(2)(b) and § 87(2)(b) were involved in a dispute with PO Ryan Cotter of the Warrants Section and PO Jarren Smalls of the 52nd Precinct, who were both off duty at the time.

PO Cotter called § 87(2)(b) and § 87(2)(b) “pussies” (**Allegations A-D: Offensive Language/Discourtesy**, § 87(2)(g)). He also allegedly called § 87(2)(b) a “pussy” (**Allegations E-F: Offensive Language Discourtesy**, § 87(2)(g)). PO Cotter allegedly made comments to the effect of, “I’ll slap the shit out of you,” and “I’ll fuck you up” (**Allegations G-J: Abuse of Authority/Discourtesy**, § 87(2)(g)). PO Cotter allegedly made similar comments to § 87(2)(b) (**Allegations K-L: Abuse of Authority/Discourtesy**, § 87(2)(g)). PO Cotter also called § 87(2)(b) and § 87(2)(b) “wetbacks,” and told § 87(2)(b) to go back to his country (**Allegations M-P, Offensive Language/Discourtesy**, § 87(2)(g)). PO Cotter allegedly also called § 87(2)(b) a “wetback” (**Allegations Q-R: Offensive Language/Discourtesy**, § 87(2)(g)). PO Cotter struck § 87(2)(b) in the head with a closed fist (**Allegation S: Force**, § 87(2)(g)). PO Cotter drew and pointed his off-duty firearm at § 87(2)(b) (**Allegations T-V: Abuse of Authority/Force**, § 87(2)(g)).

§ 87(2)(b) called 911, and the following members of service responded to the scene: DI John Portalatin, Sergeant Brian Vesely, PO Christos Christodoulou, PO Aaron Maltezo, PO Stephen Casazza, PO Matthew Dieringer, PO Joseph Peters, PO Vincent Tufanisco, PO Matthew Yeung, PO Richard Schmachtenberg, PO Matthew Traube, PO Salvatore Tortora, PO Joshua Christel, PO Justin Collins, PO Jack Crawford, PO Michael Doerler, PO John Nunziata, and Sgt. Justin Hubbard of the 110th Precinct. All responding members of service improperly used their BWC’s (**Allegations W-Z, AB-AH, AJ-AN: Abuse of Authority**, § 87(2)(g)). PO Brittany Olivares and PO Matthew Dieringer, also of the 110th Precinct, also responded and improperly used their body cameras (**Allegations AA, AI, AO: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

This incident did not result in an arrest or summons.

The CCRB obtained non-comprehensive BWC for this incident (**Board Review 01**, summarized in **Board Review 02**). The CCRB also obtained interior and exterior surveillance footage from the K Korner (**Board Review 03**, CTS-playable files in **Board Review 04**, summarized in **Board Review 05**). *Except where specifically noted*, all references to video refer to the timestamp in the video player and not to the on-screen timestamp.

PO Cotter was placed on modified duty due to this incident. As of the date of this report, his modified assignment is ongoing. Sgt. Hubbard was subsequently transferred to the Queens North Auto Larceny Unit. § 87(2)(g), § 87(4-b)

Jurisdiction

§ 87(2)(b) alleged in his intake statement that PO Cotter pointed a firearm at him during an off-duty incident, thus implicitly invoking his authority as a police officer. § 87(2)(b) alleged in his statement that one of the other off-duty officers who stayed with him at the conclusion of the incident informed him that PO Cotter was a police officer.

PO Cotter confirmed in his testimony that the weapon he had on him was one of his off-duty firearms. PO Cotter further recounted in his statement that the dispute began with one of the civilians stating, “Those guys are cops.” PO Smalls also heard § 87(2)(b) assert that PO Cotter was a police officer during this incident upon PO Cotter drawing his firearm. Though PO Cotter did not himself know how the civilians knew that they were police officers, the investigation credited that the civilians could not have known that they were police officers without the officers giving some indication, either implicitly or explicitly, that they were police officers.

Moreover, both PO Cotter and PO Smalls testified that they were able to bring their off-duty firearms into Citi Field and the K Korner bar affixed to it. They were able to do so by informing Citi Field security that they were NYPD officers, presenting their NYPD ID cards, and announcing that they were armed. DI Portalatin, who conducted an initial investigation affirmed that § 87(2)(b) upon first speaking with DI Portalatin at the stationhouse, was already aware that PO Cotter was a police officer.

As a result, the investigation determined by a preponderance of the evidence that PO Cotter invoked his status as a police officer by wielding his firearm during this dispute, particularly as this action is what alerted § 87(2)(b) to the fact that PO Cotter was a police officer. The CCRB appropriately retained jurisdiction over the allegations against PO Cotter. As it was never alleged that PO Smalls wielded his own firearm or otherwise invoked his status as a police officer, the CCRB did not plead any allegations against PO Smalls.

Findings and Recommendations

Allegation (A) Offensive Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (B) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (C) Offensive Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (D) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (E) Offensive Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (F) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (G) Abuse of Authority: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.

Allegation (H) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (I) Abuse of Authority: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.

Allegation (J) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (K) Abuse of Authority: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.

Allegation (L) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (M) Offensive Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon ethnicity.

Allegation (N) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (O) Offensive Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon ethnicity.

Allegation (P) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (Q) Offensive Language: At 41 Seaver Way in Queens, Police Officer Ryan Cotter made remarks to § 87(2)(b) based upon ethnicity.

Allegation (R) Discourtesy: At 41 Seaver Way in Queens, Police Officer Ryan Cotter spoke discourteously to § 87(2)(b)

Allegation (S) Force: At 41 Seaver Way in Queens, Police Officer Ryan Cotter used physical force against § 87(2)(b)

Allegation (T) Abuse of Authority: At 41 Seaver Way in Queens, Police Officer Ryan Cotter threatened § 87(2)(b) with the use of force.

Allegation (U) Abuse of Authority: At 41 Seaver Way in Queens, Police Officer Ryan Cotter drew his gun.

Allegation (V) Force: At 41 Seaver Way in Queens, Police Officer Ryan Cotter pointed his gun at § 87(2)(b)

Facts not in dispute

The following is a summary of facts that are not in dispute. On April 10, 2023, two separate groups of individuals attended a Major League Baseball game at Citi Field, located at 41 Seaver Way in Queens. The first group was comprised of § 87(2)(b), § 87(2)(b) and § 87(2)(b). The second group was comprised of PO Cotter, PO Smalls, PO Andrew Ruiz of the Intelligence Bureau, and PO Brendan Latimer of the 52nd Precinct, all of whom were off duty at the time of the incident. The officers were joined by two unidentified women who are unknown to both PO Smalls and PO Cotter. PO Cotter and PO Smalls entered Citi Field while armed with their off-duty weapons by presenting their NYPD identification cards to Citi Field security and announcing that they were armed. At the conclusion of the game, all above-referenced individuals went to the K Korner, a bar that is affixed to Citi Field with entrances both within the stadium and on Seaver Way.

Both parties consumed alcoholic beverages both during the game itself and while at the K Korner. While the two parties drank separately, Citi Field security told § 87(2)(b) and his friends to leave. As they left the bar, § 87(2)(b) had a brief argument with PO Smalls and his friends, though the exact nature of this conversation is not known to the investigation.

§ 87(2)(b) and his friends walked over to the corner outside the parking lot just north of the K Korner after leaving. A few minutes later, the off-duty officers left the bar and also walked toward the parking lot. Once both parties were near the parking lot, a dispute ensued, which ended with PO Cotter and PO Smalls running north on Seaver Way while § 87(2)(b) called 911 and followed them just over one block until uniformed police from the 110th Precinct found PO Cotter, PO Smalls, and § 87(2)(b). The three of them were escorted back to the 110th Precinct stationhouse where DI Portalatin conducted an initial investigation.

Civilian statements

§ 87(2)(b) provided a brief phone statement to IAB (**Board Review 09**, file ending in 1146) and a full statement to the CCRB (**Board Review 10**). His statements were consistent. He said that he was in the K Korner when Citi Field staff began alerting people that the bar was soon going to close. He briefly argued with one of the staff members. He did not remember the exact nature of the conversation but noted that it had something to do with the fact that he had just ordered a drink and was not finishing fast enough as the bar was nearing its closing time. He acknowledged that the argument became heated enough that staff asked him if he was okay. As he left the bar, he noticed that his friends were arguing with PO Cotter and PO Smalls. He was not familiar with this argument because he was already walking out of the bar. He denied ever speaking to the officers while they were inside.

§ 87(2)(b) friends joined him outside, walked across the street, and waited outside the parking lot. A few minutes later, PO Cotter and PO Smalls approached them. PO Smalls asked § 87(2)(b) about what he said while inside and told him to say it again. PO Smalls then called § 87(2)(b) a “pussy,” and said, “You ain’t gonna do nothing.” PO Smalls then told § 87(2)(b) “You’re gonna get yours,” and “I’m gonna fuck you up.” § 87(2)(b) stepped in between PO Smalls and § 87(2)(b). PO Smalls told § 87(2)(b) “Get the fuck out of my way,” and “Your friend is going to get you hurt.” He also then pointed toward § 87(2)(b) and § 87(2)(b) and said, “Someone’s gonna get fucked up,” and “I’m gonna slap the shit out of you.”

§ 87(2)(b) raised his fists and took a step back in response to PO Smalls’ comments but denied making any motions in PO Smalls’ direction. PO Cotter then suddenly struck him on the right side of his face. PO Cotter called § 87(2)(b) a “wetback,” and told him, “Go back to your country.” PO Smalls “froze up” when PO Cotter made these remarks. § 87(2)(b) angered by these comments, approached PO Cotter to confront him, but PO Smalls cut him off. § 87(2)(b) called PO Cotter a racist and asserted that he was born in the United States. The unidentified women who were with the officers attempted to pull PO Cotter away from the scene. § 87(2)(b) initially said that PO Cotter called § 87(2)(b) and his friends “pussies,” but noted that he could have been referring to the women who were trying to get him away from the scene.

Around this time, § 87(2)(b) began chasing PO Cotter, and shortly afterwards exclaimed that PO Cotter had a gun. This prompted § 87(2)(b) to leave the scene and go into the parking lot because he did not know what else to do. While in the parking lot, § 87(2)(b) observed § 87(2)(b) chasing PO Cotter and PO Smalls up Seaver Way. After he had walked away, a person approached § 87(2)(b) and requested that he ask § 87(2)(b) to hang up and to not report this incident, advising that the antagonizing parties were police officers and likely would not get in trouble.

When he called IAB to provide a narrative of the incident, § 87(2)(b) asserted that PO Cotter appeared to be under the influence of alcohol and had glossy eyes.

§ 87(2)(b) gave an intake statement to IAB (**Board Review 09**, file ending in 6183), an intake statement to the CCRB (**Board Review 11-12**), and a full phone statement to the CCRB (**Board Review 13**). § 87(2)(b) said that he did not see what transpired between his friends and anyone else in the bar, as he left before § 87(2)(b) and § 87(2)(b) did. He did, however, see his friends outside. While they were taking pictures near the parking lot, PO Smalls and PO Cotter approached them and leveled several antagonizing comments at them, namely saying, “Come over here, pussy,” “I’ll slap the shit out of you,” “I’ll fuck you up,” and calling § 87(2)(b) § 87(2)(b) and § 87(2)(b) “wetbacks.”

During this dispute, § 87(2)(b) saw PO Cotter strike § 87(2)(b) with a closed fist. He did not see exactly where PO Cotter's fist landed on § 87(2)(b) body due to the incident unfolding quickly but later learned from § 87(2)(b) that he was struck somewhere on his head. PO Cotter then walked around and aggressively approached different people who were there while continuing to shout, "I'll fuck you up," and yelling the word, "pussy."

§ 87(2)(b) walked away from the scene to find PO Cotter following him. PO Cotter reached into his waistband, drew a black pistol, and pointed it toward § 87(2)(b). In his intake complaint, § 87(2)(b) said that PO Cotter pointed the gun at him. During his full phone interview, § 87(2)(b) was unsure whether PO Cotter was pointing the gun directly at him or slightly to the side but maintained that he was able to see the muzzle of PO Cotter's firearm when he pointed it. § 87(2)(b) froze momentarily and then asked PO Cotter if he was a cop. PO Cotter did not respond to this and appeared to start nervously pacing around. There was no one particular direction that PO Cotter appeared to walk in, and he appeared to only be trying to walk away from § 87(2)(b) at one point walking into and then out of the parking lot. § 87(2)(b) reported the incident to 911, and PO Cotter and PO Smalls began to run, fleeing north on Seaver Way.

During his CCRB statement, § 87(2)(b) declined to identify the people who were with him at the game, citing that the "officers" would have their information.

§ 87(2)(b) also called 911 and provided details to the 911 operator (**Board Review 14**, summarized on **Board Review 15**). He asserted that PO Cotter flashed a firearm at him "as if he is going to shoot me in the chest," before placing it in the front of his jeans. The operator asked § 87(2)(b) if everyone was intoxicated. § 87(2)(b) then asked the officers, "Are you guys intoxicated?" One of them responded, "definitely not." § 87(2)(b) then continued to ask if "you guys," are intoxicated and advised that the 911 operator wants to know. More murmuring is heard in the background but cannot be deciphered. § 87(2)(b) then advised the operator that they were not answering. When asked directly if he was intoxicated, § 87(2)(b) denied that he was.

The CCRB reached § 87(2)(b) who declined to provide a statement regarding the incident (**Board Review 16**).

Video evidence

As noted above, the CCRB obtained interior and exterior security footage from the K Korner bar. A full summary of the video is available for review in **Board Review 05**. Screenshots labelling each relevant person in the video are available for review. **Board Review 17** points out the specific members of PO Cotter's party. **Board Reviews 18-20** respectively capture images of § 87(2)(b), § 87(2)(b), and § 87(2)(b) for review. The following is a summary of key points in the video.

A multi-camera viewing of the interior footage provides a visual of the initial argument inside the bar (**Board Review 21**, camera 2 on the left and camera 3 on the right). § 87(2)(b) comes around the bar, quickly walks down the path that leads to the exit and walks out. § 87(2)(b) follows behind him at a slower pace. As they walk to the exit, § 87(2)(b) points at PO Smalls and appears to be engaged in some level of conversation. PO Smalls and those around him appear to briefly respond. As the argument ensues, § 87(2)(b) has already left the establishment. § 87(2)(b) is standing at the end of the path but looks back toward where the argument is happening. § 87(2)(b) continues along the path toward the exit before being stopped by PO Cotter, who was also at the end of the pathway. By this point, § 87(2)(b) has also exited the establishment. § 87(2)(b) and PO

Cotter speak for a few seconds before § 87(2)(b) walks away and exits.

At 39:43 in Camera 35 (**Board Review 04**), depicting exterior footage facing north on Seaver Way, § 87(2)(b) and § 87(2)(b) go north, walk along the sidewalk outside the parking lot and then cross the street out of view. At 40:36, PO Cotter walks the same path by himself but stops upon reaching the corner outside the parking lot. As PO Cotter crosses the street, § 87(2)(b) runs back toward the entrance to the bar. At 41:36, PO Latimer, PO Smalls, and the two women walk north on Seaver way and turn left. PO Cotter re-crosses the street and joins them as they head west further into the parking lot to the left. At 41:45, § 87(2)(b) walks back over to the entrance to the parking lot with § 87(2)(b) following behind.

At 42:43, § 87(2)(b) and § 87(2)(b) walk north on Seaver Way and cross the street toward the parking lot. They are followed by other unidentified individuals and § 87(2)(b). At 43:23, as they all congregate on the corner just outside the parking lot, PO Smalls and PO Cotter quickly approach them from the west. They walk across the parking lot and momentarily stop around 15 feet away from the group. The group at this point is lined up in a row with § 87(2)(b) standing in front of them by around 10 feet in a manner consistent with taking a group picture. At 43:38, PO Smalls and PO Cotter approach the group. At this point in the video, it is evident that a dispute begins to ensue between the two groups. However, all parties are a significant distance from the camera, and the specific physical actions of the parties cannot be ascertained due to the darkness and graininess of the video. Moreover, there is southbound traffic on Seaver Way and the headlights from the cars periodically interfere with the view of the ongoing dispute.

At 44:54, PO Ruiz and PO Latimer sprint across the parking lot and approach the scene from the west. A group of bystanders pass by and walk into the parking lot from the south as the two women also approach from the west.

At 46:47, the crowd slowly walks back south toward the corner. PO Cotter and § 87(2)(b) are noticeably in front of the group. § 87(2)(b) is walking just off the sidewalk. At 46:50, PO Cotter nears within a couple feet of § 87(2)(b) who responds by raising his arms in front of his body and stepping within inches of PO Cotter. PO Cotter pulls his hands back in a sudden motion. At 46:57, PO Cotter's arms appear to reach for his waistband. As he does so, the two women who were standing behind him begin to run in the opposite direction. § 87(2)(b) responds by walking toward PO Cotter, who responds by walking past § 87(2)(b) and north on Seaver Way and away from the corner. At 47:44, PO Cotter is walking back southbound toward the corner with § 87(2)(b) following him. At 47:46 a flash consistent with the flash of a camera emanates from around § 87(2)(b) person. PO Cotter walks back into the parking lot briefly before exiting and walking north again. During this time, § 87(2)(b) is also following PO Cotter and is swinging his arms around. At 48:11, multiple parties cross Seaver Way and go out of view.

48:42, PO Cotter is walking southbound on the sidewalk again and again goes into the parking lot, this time with PO Smalls beside him. § 87(2)(b) and § 87(2)(b) are still following them. They walk north into the parking lot, meander for a few moments before walking further west and out of view. At 51:03, they come back into view behind a row of cars parked in the middle of the parking lot. At 53:10, the group again walks westward and out of view. At 52:39, the parties are largely gathered in the middle of the parking lot, and § 87(2)(b) steps away to a light pole close to the entrance to the parking lot. He remains there alone for the next few minutes. At 53:43, PO Ruiz approaches § 87(2)(b) and speaks to him.

From 54:42 to 55:24, PO Cotter, PO Smalls, and § 87(2)(b) are seen walking south in the parking lot from the northernmost part of the camera's view. They turn camera-right toward Seaver

Way. At 55:42, PO Smalls and PO Cotter begin running northbound on Seaver Way. A few seconds later, § 87(2)(b) starts running after them. At 56:48 police cars are seen driving north on Seaver Way and stopping around a block away.

Sgt. Vesley's BWC video shows Sgt. Vesely approach § 87(2)(b) and request his presence at the stationhouse (**Board Review 22**, at approximately 01:07). § 87(2)(b) hesitates for a few seconds and then says, "Okay," while nodding his head. Sgt. Vesely gestures toward an RMP. At 01:17, § 87(2)(b) says something about talking with a sergeant, then looks at Sgt. Vesely's uniform and says, "Oh shit, you are a sergeant." Sgt. Vesely says that they will discuss everything at the stationhouse. § 87(2)(b) again says, "Okay," and nods his head.

Additional evidence

A property voucher prepared for this incident shows that the NYPD invoiced three firearms belonging to PO Cotter (**Board Review 23**). The invoiced property consisted of a Glock 17 (his on-duty firearm), a Sig Sauer P365 (the off-duty firearm he had at the time of the incident), and a Glock 26 (another off-duty firearm that he did *not* have at the time of the incident). All these firearms are black, semi-automatic, nine-millimeter handguns.

DI Portalatin prepared an unusual occurrence report for this incident containing a narrative of what happened (**Board Review 24**). It only references an official interview with PO Smalls and an informal interview with § 87(2)(b). It notes that § 87(2)(b) was "highly intoxicated, combative and refused to provide his phone number." It does not elaborate as to how § 87(2)(b) was "highly intoxicated." The report notes that § 87(2)(b) called 911 and reported that "an off-duty police officer pointed a firearm at him." It further notes that "Police Officer Cotter was determined to be intoxicated and unfit for duty due to his glassy, watery eyes and the odor of alcohol emanating from his breath." DI Portalatin further noted that PO Cotter was slated to report for duty at his command at 4:27 a.m. on April 11, 2023, approximately five hours after this incident. DI Portalatin, in his report, recommended that PO Cotter be served with charges for being unfit for duty.

§ 87(2)(b)
§ 87(2)(b)

MOS statements

PO Cotter, interviewed five months after the incident, acknowledged that he was armed with his off-duty Sig Sauer P365 while at Citi Field and afterwards (**Board Review 26**). He acknowledged drinking alcoholic beverages during the game but did not remember how much he had or what kinds of drinks he had. He nonetheless denied that he was intoxicated or impaired. He testified that a dispute ensued between the group of civilians and the off-duty officers as the civilians left the bar. He did not hear the exact nature of the dispute. He acknowledged responding to the civilians but did not remember what he said. He testified that he left the bar with his friends and saw the civilians still outside the bar. The civilians threatened to physically harm them once everyone was outside. The civilians had said "They're cops. We should fuck them up." PO Cotter split up from the rest of the group as everyone attempted to leave the location.

PO Cotter did not remember PO Smalls approach the civilians and call any of them a "pussy," and did not remember him saying, "You're gonna get yours," "I'm gonna fuck you up," "Get the fuck out of my way," "I'm gonna slap the shit out of you," or "Someone's gonna get fucked up." PO Cotter did not remember if he himself made these statements. He did not see § 87(2)(b) holding up

his fists and attempting to stand in between PO Smalls and § 87(2)(b). Asked if he recalled any physically aggressive behavior by the civilians, PO Cotter reiterated the verbal threats they had made. He also noted that at some point during the dispute, PO Smalls sustained a cut just above his eye. PO Cotter did not see how this happened but noted that PO Smalls later told him that someone had thrown an object at him. PO Cotter did not recall if he ever struck someone on the side of their head or if anyone complained that they had been hit. Asked if any person ever yelled out that someone hit him or that “someone’s gonna get it,” PO Cotter said that he only recalled the individuals generally trying to start a fight, but he did not remember any specific thing that prompted this and did not remember any specific statements such as, “Somebody’s gonna get it.”

PO Cotter did not recall if he ever told anyone to “go back to your country,” or called anyone a “wetback.” PO Cotter acknowledged that he understood the term, “wetback,” to be a “racial comment,” for people of Spanish descent. He did not hear any other officer make this statement. He did not remember if he called anyone a “pussy.” He did not remember PO Smalls or himself using profanity. Regarding the allegation of his use of his off-duty firearm, PO Cotter denied that he ever indicated that he was armed to anyone on scene. He did not recall if he ever drew and pointed his firearm at anyone during the dispute. He did not remember if he ever lifted his shirt or otherwise revealed his firearm to anyone. The only act he did remember was tapping his waistband to ensure that it did not fall as he increased his speed while trying to get away from the scene.

Asked specifically if he could deny any of the allegations of discourteous or offensive language, PO Cotter again said that he could not recall making these statements. Asked again if he could deny drawing and pointing his gun, he again said that the only thing he could remember was holding his gun in place.

When presented with the above-referenced security footage that shows him re-approaching the corner after the two parties had separated, PO Cotter could only speculate that he went that way to wait before going back to his car. When presented with the exterior footage at the 46:50 mark, PO Cotter said he interpreted § 87(2)(b) actions to be him trying to take PO Cotter’s sweater.

PO Smalls testified that he was also armed with a firearm while at the baseball game at Citi Field and also acknowledged drinking alcoholic beverages, specifically two beers during the game, and two beers after the game (**Board Review 27**). Upon arriving at the K Korner after the game, PO Smalls observed § 87(2)(b) and § 87(2)(b) being escorted out but similarly did not see the circumstances leading to them leaving. The three men, but mostly § 87(2)(b), yelled and cursed at PO Smalls and his group, calling them “faggots,” and asked staff why they were allowed to stay. PO Smalls told them to leave and said they were bothering them but denied making any other statements and did not remember anyone else responding. PO Smalls believed the individuals to be intoxicated because they were yelling and because § 87(2)(b) appeared unsteady on his feet.

When PO Smalls left the bar with the others, § 87(2)(b) group was still outside. PO Smalls went to the parking lot with the intention to get in a car and leave. § 87(2)(b) group continued yelling at PO Smalls and his group as PO Smalls attempted to walk to the parking lot. PO Smalls acknowledged that he might have responded by asking, “What did you say?” He denied calling anyone a “pussy,” and did not remember if he asked anyone in the group about the dispute that took place inside the bar.

§ 87(2)(b) then threw either a souvenir plastic cup or a stack of them at PO Smalls’ head, causing a small laceration. PO Smalls was about to walk up to § 87(2)(b) but then he heard § 87(2)(b) behind PO Smalls at the time, shout out that PO Cotter had drawn a gun and pointed it at

him. Around this time, § 87(2)(b) had also asserted that PO Cotter and PO Smalls were police officers. He denied ever saying, “I’ll fuck you up,” “Get the fuck out of the way,” “Someone’s gonna get fucked up,” or ever using profanity.

PO Smalls made clear during his interview that he and PO Cotter became separated once the dispute re-ignited outside. As a result, he did not see whether PO Cotter ever wielded his gun during the dispute and only heard what § 87(2)(b) exclaimed in the moment. He further did not remember seeing PO Cotter strike anyone and was unaware of any specific comments that PO Cotter might have made. PO Smalls heard § 87(2)(b) speaking on the phone and speculated that he had called 911. PO Smalls and PO Cotter attempted to walk away, and they then started jogging away as § 87(2)(b) kept following them.

After putting some distance between themselves and the parking lot, uniformed police arrived on scene. PO Smalls and PO Cotter spoke with Det. Washington of the 110th Precinct Detective Squad, but PO Cotter did most of the talking. PO Cotter described what happened, but PO Smalls did not remember if PO Cotter mentioned the allegation that he pointed his firearm at § 87(2)(b). The police escorted PO Cotter, PO Smalls, and § 87(2)(b) to the stationhouse, where PO Smalls spoke with DI Portalatin. PO Smalls refused medical attention and ultimately treated his injury himself. DI Portalatin did not disclose to him whether he ever spoke with § 87(2)(b) or commented to PO Smalls on § 87(2)(b) credibility. PO Smalls affirmed that DI Portalatin safeguarded PO Smalls’ firearm during the course of the initial investigation but returned it to him before he left.

PO Smalls ultimately decided not to pursue charges against § 87(2)(b) when he was arrested days after the incident.

When presented with exterior footage from Camera 35 at 43:26, which shows PO Cotter and PO Smalls re-approaching the group after walking away, PO Cotter again stated that he went back because the group was still yelling at them. Asked why he did not simply ignore them and walk away, PO Smalls said, “I’m not sure.”

DI Portalatin described his initial investigative steps in a call to IAB (**Board Review 09**, file ending in 6187). During his initial investigation, DI Portalatin interviewed § 87(2)(b) and PO Smalls. DI Portalatin reported to IAB that § 87(2)(b) was unable to tell him which officer was the one who pointed a firearm at him. PO Smalls informed him that he got into an argument with § 87(2)(b) who proceeded to throw a cup at him. He further noted that both officers were armed and that he safeguarded the firearms and is preparing a complaint report for second-degree assault.

DI Portalatin further described his initial investigation in his CCRB statement (**Board Review 28**). He attempted to speak to § 87(2)(b) about what happened, but § 87(2)(b) was “highly intoxicated,” in that he had slurred speech, smelled of alcohol, and had bloodshot eyes, and was “highly uncooperative,” in that he was refusing to answer questions. He declined to identify who he was at the game with and would not elaborate when questioned further about his allegation that an officer menaced him.

DI Portalatin initially said that § 87(2)(b) accused the “white guy” of menacing him with a firearm. DI Portalatin later said that § 87(2)(b) did not know who pointed the firearm at him. Asked why he earlier said that it was “the white guy,” DI Portalatin said that he only determined it was the white officer after the initial investigation was complete because he believed that PO Cotter was the only one who was armed, though he did not remember what firearm he had on him.

According to CTS, PO Cotter is white and PO Smalls is Black.

DI Portalatin affirmed that PO Smalls had a bruise to his head and that PO Smalls asserted it was from an individual throwing an object at him. DI Portalatin asked PO Cotter if he drew his firearm, but he did not remember PO Cotter's answer at the time of his CCRB interview. Similarly, DI Portalatin asked PO Smalls if he saw PO Cotter draw his firearm, but DI Portalatin did remember PO Smalls saying that he did not see this happen. DI Portalatin also confirmed that he informed PO Smalls and PO Cotter that he did not believe that § 87(2)(b) was telling the truth due to his intoxication and refusal to cooperate with the interview.

DI Portalatin also denied in his CCRB statement believing that either PO Cotter or PO Smalls were intoxicated. Although this directly contradicts what he wrote about PO Cotter in the UF49 report (**Board Review 24**), the investigation was not able to confront DI Portalatin with this inconsistency prior to the closure of this case due to the NYPD Legal Bureau twice denying the existence of said UF49 (**Board Review 29-30**). CCRB Complaint § 87(2)(b) was generated to address DI Portalatin's potential untruthful statements, and that investigation is ongoing.

After being presented with Sgt. Vesely's BWC showing Sgt. Vesely briefly speak to § 87(2)(b) and the audio of § 87(2)(b) IAB call, DI Portalatin maintained that § 87(2)(b) had slurred speech and that his demeanor was much more aggressive during his interview at the stationhouse.

Sgt. Vesely testified that he also believed § 87(2)(b) might have been intoxicated (**Board Review 31**). However, the only reason he cited for believing this possibility was the odor of alcohol. Sgt. Vesely did not remember § 87(2)(b) slurring his words or walking unsteadily and acknowledged that § 87(2)(b) was not yelling or cursing during his interaction with him.

Findings, analysis, and conclusions

In making the following determinations, the investigation took particular note of the fact that PO Cotter claimed to not remember several details of the incident, including whether he made the alleged threatening, profane, and offensive statements and whether he ever drew or pointed his firearm, despite being interviewed only five months after a particularly unique and memorable incident and being asked about very specific and notable allegations.

Although the investigation did obtain security footage depicting the dispute between the parties outside the parking lot, said footage was dark, distant, grainy, and lacked audio. As such, the video alone was not dispositive of any specific allegations and was only used to determine broadly how the incident unfolded. To this point, the investigation found § 87(2)(b) and § 87(2)(b) broad account of what happened was largely corroborated by the limited video evidence of the encounter. They both stated that they were walking away from the bar just as the argument between § 87(2)(b) and the officers began to unfold. This narrative is backed up by the video and explains why they were not wholly aware of the details of § 87(2)(b) dispute with the officers.

Both sides in the dispute characterized the other side as showing signs of intoxication. Though both sides acknowledged drinking some amount of alcohol during and just after the baseball game, the investigation ultimately reached no conclusions as to each party's levels of intoxication. Though DI Portalatin stated that § 87(2)(b) slurred his words during his interview with him, such an assertion is not supported by Sgt. Vesely's BWC video taken just before § 87(2)(b) was brought to the 110th Precinct stationhouse or by § 87(2)(b) IAB intake call made shortly after he left the stationhouse. Although § 87(2)(b) exact words cannot be heard on Sgt. Vesely's

BWC due to § 87(2)(b) speaking quietly, what few words can be heard do not appear slurred, much less to the point of heavy intoxication. Moreover, § 87(2)(b) demeanor during his IAB intake call and his 911 call also does not prove any intoxication on his part. While the audio does show him being occasionally slow to respond to the IAB detective's questions, such demeanor alone is not indicative of intoxication any more than it would be of exhaustion. Similar to his demeanor at the scene, there is no noticeably heavily slurred speech in his IAB call or his 911 call that is indicative of intoxication. DI Portalatin's claim that § 87(2)(b) was not fully cooperative with his investigation, while believable, does not prove anything more than § 87(2)(b) initial hesitation to provide certain information so soon after the incident.

Furthermore, the investigation found numerous issues with DI Portalatin's initial inquiry into the incident. His decision to inform PO Cotter and PO Smalls of his opinion about § 87(2)(b) allegations § 87(2)(g) Additionally, his testimony that he was only able to identify PO Cotter as the subject of the gun point allegation after confirming that he was the only one who was armed § 87(2)(g) First and foremost, PO Smalls, in his CCRB statement, acknowledged being armed. Secondly, DI Portalatin also reported to IAB when he first reported the incident that PO Smalls was armed. As a result, the investigation did not find DI Portalatin to be a credible fact collector and rejected his assertion that § 87(2)(b) was intoxicated at the time he provided an initial statement, particularly as recordings of him both shortly before and shortly after the incident do not reveal § 87(2)(b) to have any clear signs of intoxication. As PO Cotter's fitness for duty was outside the purview of this investigation, the investigation drew no conclusions on his level of intoxication based on DI Portalatin's contradictory statements. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Moreover, although § 87(2)(b) broadly attributed the discourteous, offensive, and threatening statements to both PO Cotter and PO Smalls, § 87(2)(b) was very specific and detailed in describing how the incident unfolded outside the parking lot and which officers made which statements. As a result, the CCRB credited that § 87(2)(b) narrative was an unembellished account of the incident from his perspective. His testimony was logical, consistent, and broadly corroborated by § 87(2)(b) statement and by video. Their statements are similar enough to corroborate each other but not so similar that they would raise concerns of coordination.

Specifically, they both consistently testified that it was the officers who re-ignited the argument once they were outside. Although the video evidence is silent, dark, grainy, and distant, it at the very least confirms that PO Smalls and PO Cotter went out of their way to re-approach the civilians well after everyone had left the bar and walked in different directions. It also further corroborates § 87(2)(b) claim that PO Smalls and PO Cotter were walking around aimlessly after he learned that PO Cotter was a police officer. Video shows the officers walking north into the parking lot, then temporarily out of view to the east, then back into the parking lot, and then finally running north on Seaver Way. This seemingly random pattern of movement is consistent with § 87(2)(b) characterization. Alternatively, PO Cotter and PO Smalls offered little credible reasoning for why they re-approached the civilians, § 87(2)(g)

§ 87(2)(g) investigation also took particular note of PO Cotter's inability to remember the amount or type of alcohol that he had at Citi Field.

According to the Merriam-Webster Dictionary, the term, "wetback," is an offensive term "used as an insulting and contemptuous term for a Mexican who enters the U.S. illegally" (**Board Review 32**). The term, "pussy," is a vulgar term for "the female partner in sexual intercourse," as well as a

slang term for “a weak or cowardly man or boy” (**Board Review 33**).

Administrative Guide 304-06 prohibits officers from “engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department,” and from “Using discourteous or disrespectful remarks regarding another person’s age, ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability” (**Board Review 34**, emphasis added).

In *Police Department v. Mahadio*, OATH Index No. 1588/00, on charges of offensive language filed by the CCRB in case 9901447, the Office of Administrative Trials and Hearings held that off-duty offensive remarks, particularly racial epithets, as well as revealing a gun during an off-duty dispute are actionable CCRB charges. The respondent made racially charged comments toward multiple civilians and then later revealed his gun during an off-duty dispute. The judge held that there exists a nexus between a respondent’s use of offensive language and one’s status as a police officer due to the implications of a police officer’s ability to impartially apply the law. Further, the officer’s wielding of his firearm had an actionable nexus due to his use of his weapon (**Board Review 35**, analysis on pages 58-65).

Although § 87(2)(b) testified that it was possible that PO Cotter was referring to the unidentified women who were trying to de-escalate the situation, § 87(2)(b) and § 87(2)(b) were both in agreement that PO Cotter used the term, “pussies,” during the dispute, and both suggested that he was using the term to refer to § 87(2)(b) § 87(2)(b) and § 87(2)(b). The investigation did not draw any conclusions regarding any offensive or discourteous comments by PO Cotter based on PO Smalls’ denial of hearing PO Cotter’s alleged comments, as PO Smalls testified that he was not paying attention to PO Cotter and did not hear any specific statements PO Cotter had made. Crucially, PO Cotter did not deny using the term after being questioned multiple times about his use of the term. § 87(2)(g)

Similarly, both § 87(2)(b) and § 87(2)(b) consistently testified that PO Cotter used the term, “wetback,” though their testimonies varied regarding to whom PO Cotter directed this slur. § 87(2)(b) testified that PO Cotter directed this comment at him, then followed it up by telling him, “Go back to your country.” § 87(2)(b) more broadly characterized this comment as being directed toward both him and his friends. PO Cotter similarly did not deny saying these ethnic slurs. Due to the consistent testimony that PO Cotter used the term, “wetback,” during this dispute, PO Cotter’s refusal to deny making the offensive comment, and the video broadly corroborating the civilians’ narrative, § 87(2)(g)

Although § 87(2)(b) said in his full CCRB statement that he could not tell exactly where PO Cotter pointed his gun, his statements to the 911 operator, to the IAB detective, to DI Portalatin, and to the CCRB intake investigator all indicate that he accused PO Cotter of pointing the gun at him. Moreover, as § 87(2)(b) still maintained in his full CCRB statement that the muzzle of the firearm was visible, the investigation did not consider this to be such a significant deviation from his previous testimony that it warranted discrediting his testimony on this allegation, particularly as a visible muzzle would still indicate that the gun was at least broadly pointed in his direction.

Although § 87(2)(b) alleged that it was both PO Smalls and PO Cotter who made the alleged threatening comments, § 87(2)(b) more specifically testified that it was PO Smalls alone who made such comments. This small, but crucial, difference in their testimonies prevented the investigation from reaching a disposition on the merits as far as whether it was both PO Cotter and PO Smalls or

PO Smalls alone who allegedly made these comments. § 87(2)(g)

Unlike PO Cotter, PO Smalls denied making all the alleged comments, and the investigation was largely inconclusive as to whether PO Smalls made any of the alleged comments due to conflicting testimony and lack of additional evidence.

§ 87(2)(g)

Even if PO Cotter's ethnically insensitive comment was not directed at § 87(2)(b) was certainly close enough to hear the comments and take offense to them. The administrative guide prohibits officers from making disrespectful comments regarding ethnicity and gender. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide Procedure 221-01 states, "In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence."

The Procedure further states, "The decision to display or draw a firearm should be based on an articulable belief that the potential for **serious** physical injury is present" (**Board Review 36**, emphasis added). Patrol Guide Procedure 221-03 defines "serious physical injury" as "Physical injury or illness that creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of function of any bodily organ/limb" (**Board Review 37**).

§ 87(2)(g)

Although § 87(2)(b) acknowledged taking a fighting stance in response to PO Smalls advancing on § 87(2)(b) PO Smalls himself said that

he never felt threatened by anyone other than § 87(2)(b) on account of him having thrown an object at him. § 87(2)(g)

Furthermore, PO Cotter also did not himself see the bottle get thrown and did not learn about it until after he re-united with PO Smalls. § 87(2)(g)

Regarding the allegation that PO Cotter wielded his gun and pointed it at § 87(2)(b) during the dispute, the investigation noted that both PO Smalls and § 87(2)(b) heard § 87(2)(b) excitedly utter that PO Cotter had a gun during the dispute. § 87(2)(g)

Regardless, PO Smalls' and § 87(2)(b) testimonies that they heard § 87(2)(b) say that PO Cotter had a gun still support § 87(2)(b) account of what happened. It is true that § 87(2)(b) and PO Smalls' testimonies would normally be considered hearsay as they only heard § 87(2)(b) exclaim that PO Cotter had a gun and did not themselves see the gun. § 87(2)(g)

It was particularly telling that both PO Smalls and § 87(2)(b) heard § 87(2)(b) yell out that PO Cotter had a gun. § 87(2)(g)

Crucially, § 87(2)(b) and PO Smalls testified that § 87(2)(b) uttered this statement in such close temporal proximity to the time of the incident that it was extremely unlikely that § 87(2)(b) could have fabricated it at the time of the incident when the statement was made during a fast-moving dispute.

Notably, PO Cotter's account of what happened offers no explanation as to how § 87(2)(b) could have known that he was armed with a black nine-millimeter handgun. It is evident from video that PO Cotter's shirt went well below his waist, thus it is unlikely that he could have accidentally revealed it. As with other parts of his testimony, the investigation found it telling that PO Cotter did not deny drawing and pointing his gun during the dispute. § 87(2)(g)

§ 87(2)(g)

By all accounts, § 87(2)(b) was the least aggressive of the three civilians. There is nothing indicating that he assaulted anyone or even took a fighting stance. Moreover, the circumstances surrounding this case do not lend themselves to anything more than an ordinary verbal dispute and brief physical scuffle. § 87(2)(g)

Allegation (W) Abuse of Authority: At 349 126th Street in Queens, Sergeant Justin Hubbard improperly used his body-worn camera.

Allegation (X) Abuse of Authority: At 349 126th Street in Queens, Police Officer Christos Christodoulou improperly used his body-worn camera.

Allegation (Y) Abuse of Authority: At 349 126th Street in Queens, Police Officer Jack Crawford improperly used his body-worn camera.

Allegation (Z) Abuse of Authority: At 349 126th Street in Queens, Police Officer John Nunziata improperly used his body-worn camera.

Allegation (AA) Abuse of Authority: At 349 126th Street in Queens, Police Officer Michael Doerler improperly used his body-worn camera.

Allegation (AB) Abuse of Authority: At 349 126th Street in Queens, Deputy Inspector John Portalatin improperly used his body-worn camera.

Allegation (AC) Abuse of Authority: At 349 126th Street in Queens, Police Officer Joshua Christel improperly used his body-worn camera.

Allegation (AD) Abuse of Authority: At 349 126th Street in Queens, Police Officer Salvatore Tortora improperly used his body-worn camera.

Allegation (AE) Abuse of Authority: At 349 126th Street in Queens, Police Officer Matthew Traube improperly used his body-worn camera.

Allegation (AF) Abuse of Authority: At 349 126th Street in Queens, Police Officer Richard Schmachtenberg improperly used his body-worn camera.

Allegation (AG) Abuse of Authority: At 349 126th Street in Queens, Police Officer Matthew Yeung improperly used his body-worn camera.

Allegation (AH) Abuse of Authority: At 349 126th Street in Queens, Police Officer Vincent Tufanisco improperly used his body-worn camera.

Allegation (AI) Abuse of Authority: At 349 126th Street in Queens, Police Officer Brittany Olivares improperly used her body-worn camera.

Allegation (AJ) Abuse of Authority: At 349 126th Street in Queens, Sergeant Bryan Vesely improperly used his body-worn camera.

Allegation (AK) Abuse of Authority: At 349 126th Street in Queens, Police Officer Joseph Peters improperly used his body-worn camera.

Allegation (AL) Abuse of Authority: At 349 126th Street in Queens, Police Officer Stephen Casazza improperly used his body-worn camera.

Allegation (AM) Abuse of Authority: At 349 126th Street in Queens, Police Officer Aaron Maltezo improperly used his body-worn camera.

Allegation (AN) Abuse of Authority: At 349 126th Street in Queens, Police Officer Justin Collins improperly used his body-worn camera.

Allegation (AO) Abuse of Authority: At 349 126th Street in Queens, Police Officer Matthew Dieringer improperly used his body-worn camera.

It is undisputed that this job initially went over the radio as an officer needing assistance (or 10-13), which is commonly known to be among the highest priority jobs. The radio run from this job provides the details of the 10-13, namely that this involved a civilian disputing with NYPD officers and that one of them “flashed his firearm” (**Board Review 39**, from approximately 00:06-00:58). At 12:10 in the recording, which is ten seconds before its conclusion, DI Portalatin tells all units to

resume patrol (or go “98”).

A review of the BWC (**Board Review 01**) reveals the following. PO Christel, PO Tortora, PO Traube, PO Schmachtenberg, PO Yeung, PO Olivares, PO Tufanisco, and DI Portalatin all activated their cameras upon arrival at the incident location. They all deactivated their cameras within 37 seconds of activating them, with DI Portalatin deactivating his camera a mere 13 seconds after activation. PO Christel was the first to activate his camera at 23:28:09, per the on-screen timestamp (**Board Review 40**, at 00:59). By 23:30:09 (see the end of DI Portalatin’s BWC in **Board Review 41**), these eight members of service had all deactivated their cameras.

PO Peters’ BWC (**Board Review 42**) shows PO Olivares (00:45, appearing to hold her breath) and PO Tufanisco (walking on PO Olivares’ right) walking toward PO Peters’ left at approximately 23:33:08, per the on-screen timestamp. At 00:50, PO Tortora is on screen standing in the middle of the frame with his back turned toward § 87(2)(b). At 00:54, PO Yeung comes around the back of an RMP.

Sgt. Vesely’s BWC shows DI Portalatin in the background at 23:32:59, per the on-screen timestamp (**Board Review 22**, at approximately 01:32, standing behind a silver sedan in his white uniform).

PO Casazza’s BWC (**Board Review 43**) shows PO Traube on scene at 23:32:43, per the on-screen timestamp (00:17, standing on the passenger side of a silver sedan). PO Yeung is standing directly in front of PO Casazza at 00:35. PO Christel is standing on the right side of the screen at 00:45. PO Schmachtenberg walks up to PO Casazza with PO Yeung at 01:14.

PO Olivares’ BWC (**Board Review 44**) shows PO Olivares and PO Tufanisco approaching the scene at approximately 01:05. As they approach, PO Christel approaches them and waves his hand in front of his BWC. PO Olivares then turns her camera off. PO Tufanisco’s BWC is consistent with PO Olivares’ BWC.

Sgt. Vesely, PO Peters, PO Collins, PO Dieringer, PO Casazza, and PO Maltezo all activated their cameras as well. Each of their BWC videos confirms that they were on scene for at least one minute prior to activation, as their one-minute pre-event “buffer” shows them on scene a full minute prior to them activating their cameras.

It is undisputed that PO Christodoulou, Sgt. Hubbard, PO Crawford, PO Nunziata, and PO Doerler did not activate their cameras at any point during this incident (**Board Review 45-47**). It is further undisputed that this job came over as a request for an additional unit, with nearly all parties recalling that it was a 10-13, though some had suggested it might have been a 10-85.

PO Christel’s, PO Tortora’s, PO Traube’s, PO Schmachtenberg’s, PO Yeung’s, PO Tufanisco’s, and DI Portalatin’s testimonies (**Board Review 48-53, 28**) were all similar as far as why they deactivated their cameras. They broadly testified that they all believed the incident to be over by the time they deactivated their cameras and that they were not taking any specific law enforcement action.

PO Christel denied that the hand-motion captured in PO Olivares’ BWC video was him giving any specific instructions to officers. When asked directly what the purpose of making that motion was, he replied, “Just going like this,” while mimicking the motion.

Sgt. Vesely did not recall any reason as to why he did not activate his BWC before the point that he

did (**Board Review 31**). On the advice of counsel, he noted that he had not spoken to any civilian witnesses yet and further testified that he activated his camera when he was about to do so. Sgt. Hubbard (**Board Review 54**) said he did not activate his BWC because he was so focused on responding to what he believed to be an emergency. Asked directly if this meant he simply forgot to turn it on, he said he did not know why he did not activate it in the moment.

PO Peters understood that he was to activate his camera upon responding to any job, but when presented with his BWC video was unable to explain why he did not activate his camera before the time that he did (**Board Review 55**). PO Collins similarly acknowledged that his job was a mandatory activation (**Board Review 56**). When asked why he did not turn his camera on earlier, he said that that it appeared that “everything was done, so I figured – like – all right, let me just go out.” However, once he realized that the incident was still, in fact, ongoing, he activated his camera at that point.

PO Casazza also said that a BWC must always be activated for a 10-13 (**Board Review 57**). When presented with his BWC at the 00:00 mark that shows him on scene, PO Casazza did not know why he had not activated his BWC. He added that he had every intention of turning his camera on at the proper time and acknowledged that he had no reason not to turn his camera on earlier.

PO Maltezo said that when he arrived, it appeared that the incident was “wrapped up,” as he did not see any fighting or yelling and that the incident appeared “as normal as it could be” (**Board Review 58**). However, he did not activate his camera until he realized the incident was not over, which he noticed around one or two minutes after arriving. He realized it was not over when he saw that “there was people on scene still that weren’t just police officers – outside of vehicles I guess.” Asked why he did not activate his camera earlier, he said that it takes eight to ten minutes to get to Citi Field from the stationhouse and that, “usually it’s over before you get there.”

PO Dieringer said that he did not activate his camera until he learned that he would be helping transport someone back to the stationhouse (**Board Review 59**). He did not activate his camera earlier because it appeared that the incident was over when he got there, and he did not have any additional information about what was going on. When asked how he knew the incident was over, he said, “I guess the general demeanor of everyone around.” When asked why he remained on scene if the incident was over, he said that there were no other active jobs and that “I always like to stick around just to help out as much as I can.”

PO Christodoulou believed that he had activated his camera but acknowledged that he did not when he searched for the video on his phone and did not find it (**Board Review 60**). He similarly did not know why he did not activate his camera for this incident. PO Crawford specifically testified that he arrived with PO Olivares, and as he arrived, he saw officers turning their cameras off and telling him that DI Portalatin told them to return to their patrol (**Board Review 61**). However, he could not remember which officers he saw turning their cameras off.

PO Doerler and PO Nunziata both testified that they were not taking any police action, so they did not activate their cameras (**Board Review 62-63**).

§ 87(2)(g)

Patrol Guide Procedure 212-123 instructs officers to “activate BWC **prior to engaging** in any police action,” defined as “Any police service, as well as, law enforcement or investigative activity

conducted in furtherance of official duties. Police action includes responding to calls for service, addressing quality of life conditions, handling pick-up assignments and any self-initiated investigative or enforcement actions such as witness canvasses, vehicle stops and Investigative Encounters.” It further instructs officers to “**Record continuously**, until investigative, enforcement, or other police action is concluded” (**Board Review 64**, emphasis added).

It is undisputed that Sgt. Hubbard, PO Christodoulou, PO Crawford, PO Nunziata, and PO Doerler did not activate their cameras before responding to this job. As noted above, they were responding to a 10-13. As such, they were required to at least turn on their cameras upon arrival. They did not do so and then remained on scene for at least a few minutes before leaving. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The investigation further did not credit the assertion of PO Christel, PO Tortora, PO Traube, PO Schmachtenberg, PO Yeung, PO Tufanisco, and DI Portalatin that they believed the incident to have been over by the time they got there. Regardless of DI Portalatin’s instruction to resume patrol, footage from other officers confirms that after deactivating their cameras, they had remained on scene for longer than their cameras had been activated. Furthermore, the investigation broadly determined that DI Portalatin was making decisions as far as the next steps to handling the off-duty incident that he had just learned about and therefore still had a high degree of involvement after he deactivated his camera. Though the officers’ relative involvements in the job itself and the subsequent transport of the parties varied, the Patrol Guide states that merely responding to a call for service warrants the activation of a BWC and that officers are to keep their cameras on until the job is concluded. As the investigation was clearly still ongoing as members of service were speaking with the various parties § 87(2)(g)

§ 87(2)(g)

Moreover, the investigation found especially telling that these eight members of service had waited, at most, 37 seconds before deactivating their cameras. This could not possibly have been an amount of time long enough to discern that an incident as serious as a 10-13 could have been resolved with almost none of them taking any major investigative steps, having any substantive conversations with other responding members of service, or receiving any audible instructions from a supervisor before deactivating their cameras, particularly as they remained on scene for a few more minutes.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Although the investigation credits that Sgt. Vesely likely activated his camera once he was about to speak to § 87(2)(b) the Patrol Guide makes plainly clear that officers are to activate their cameras *prior* to responding to such calls for service. For similar reasons, the investigation also found that PO Peters, PO Dieringer, PO Casazza, PO Maltezo, and PO Collins § 87(2)(g) particularly PO Maltezo’s assumption that a job as serious as a 10-13 would be over by the time he got there and PO Dieringer’s assertion that he believed the incident to be over while simultaneously remaining on scene to assist officers.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) have been a party (**Board Review 65**).
- PO Cotter has been a member of service for seven years and this is the first CCRB complaint to which he has been a subject.
- DI Portalatin has been a member of service for 22 years and has been a subject in five other CCRB complaints and 14 other allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Hubbard has been a member of service for 12 years and has been a subject in one other CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Sgt. Vesely has been a member of service for 11 years and this is the first CCRB complaint to which he has been a subject.
- PO Christodoulou has been a member of service for three years and has been a subject in one other CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- PO Crawford has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Nunziata has been a member of service for three years and has been a subject in two other CCRB complaints and two other allegations, neither of which were substantiated. § 87(2)(g)

- PO Doerler has been a member of service for three years and has been a subject in two other CCRB complaints and five other allegations, none of which were substantiated. § 87(2)(g)
- PO Christel has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Tortora has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Traube has been a member of service for three years and has been a subject in two other CCRB complaints and four other allegations, all of which are still open. § 87(2)(g)
- PO Schmachtenberg has been a member of service for two years and has been a subject in one other CCRB complaint and five allegations, all of which are still open. § 87(2)(g)
- PO Yeung has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Tufanisco has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- This is the first CCRB complaint to which PO Olivares has been a subject.
- PO Peters has been a member of service for six years and has been a subject in one other CCRB complaint and one other allegations, which was not substantiated. § 87(2)(g)
- PO Dieringer has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Casazza has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Maltezo has been a member of service for nine years and has been a subject in one other CCRB complaint and two other allegations, neither of which were substantiated. § 87(2)(g)
- PO Collins has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of May 3, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed by § 87(2)(b) in regard to this incident (**Board Review 66**). As of February 14, 2024, there is no Notice of Claim filed by § 87(2)(b) for this incident (**Board Review 67**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing, as there was no specific police action or inaction that took place during this incident.

Squad: _____ 4 _____

Investigator:	<u>Stephen J. DiFiore</u> Signature	<u>Inv. Stephen DiFiore</u> Print Title & Name	<u>June 14, 2024</u> Date
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Squad Leader:	<u>Raquel Velasquez</u> Signature	<u>IM Raquel Velasquez</u> Print Title & Name	<u>June 14, 2024</u> Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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